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UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Christoph Becke
Application Number: 10/816,371
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Group Art Unit: 3637
Examiner: Janet Marie Wilkens
Title: REFRIGERATOR AND A DOOR STORAGE
COMPARTMENT FOR THE REFRIGERATOR

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellant hereby files an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f).

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeraete GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 1- 8 have been cancelled. Claims 9 - 18 are pending in the present application. Claims 9 – 16 have been finally rejected. The final rejections of claims 9 – 13, 15, and 16 are being appealed.

(4) STATUS OF AMENDMENTS

In response to the Final Rejection dated August 20, 2007, a Request for Reconsideration was received in the US Patent Office on November 23, 2007. An Advisory Action was mailed on December 5, 2007 indicating that the Request for Reconsideration received in the US Patent Office on November 23, 2007 had been considered but did not place the present application in condition for allowance. A Notice of Appeal was received in the US Patent Office on December 14, 2007. An Amendment has been filed on even date herewith to submit a Terminal Disclaimer to overcome the rejection of claims 9 – 16 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. D483,384. No other amendment has been filed subsequent to the Final Rejection dated August 20, 2007.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

CLAIM 9

Independent claim 9 of the present application recites a door storage compartment 11 for a refrigerator [Para. 0023 and Figures 1 – 5 of the present application]. The door storage compartment 11 includes at least one first storage compartment portion 1 having a full first horizontally-directed depth and a first vertically-directed storage depth and at least one second storage compartment portion 2 [Para. 0023 and Figures 1, 3, and 4 of the present application]. The second storage compartment portion 2 has a front wall 5 [Para. 0024 and Figures 1, 3, and 4 of the present application]. The second storage compartment portion 2 has a second horizontally-directed depth being less than half of the full first horizontally-directed depth of the first storage compartment portion 1 [Para. 0023 and Figures 1, 3, and 4 of the present application]. Additionally, the second storage compartment portion 2 follows the first storage compartment portion 1 in a longitudinal direction of the door storage compartment 11 [Para. 0023 and Figures 1 – 5 of the present application]. The front wall 5 of the second storage compartment portion 2 has a second vertically-directed storage depth substantially the same as the first vertically-directed storage depth of the first storage compartment portion 1, whereby the second vertically-directed storage depth of the second storage compartment portion 2 is substantially the same as the first vertically-directed storage depth of the first storage compartment portion 1 [Para. 0023 and Figures 1 – 5 of the present application].

CLAIM 13

Claim 13 of the present application depends from independent claim 9 and recites a door storage compartment 11 for a refrigerator as set forth in independent claim 9 [Para. 0023 and Figures 1 – 5 of the present application] with the additional feature that the door storage compartment further includes an intermediate wall 3

as well as the feature that the first and second storage compartment portions 1,2 are generally boxed shaped and separated by the intermediate wall 3 [Para. 0024 and Figures 1 and 2 of the present application].

CLAIM 16

Independent claim 16 of the present application recites a refrigerator including a housing, a door attached to the housing, a first door storage compartment 12 and a second door storage compartment 11 mounted above the first door storage compartment 12 [Para. 0028 and Figure 4 of the present application]. The second door storage compartment 11 includes at least one first storage compartment portion 1 having a full first horizontally-directed depth and a first vertically-directed storage depth and at least one second storage compartment portion 2 [Para. 0023 and Figures 1, 3, and 4 of the present application]. The second storage compartment portion 2 of the second door storage compartment 11 has a second horizontally-directed depth less than the full first horizontally-directed depth of the first storage compartment portion 1 [Para. 0023 and Figures 1, 3, and 4 of the present application]. Additionally, the second storage compartment portion 2 of the second door storage compartment 11 follows the first storage compartment portion 1 in a longitudinal direction of the second door storage compartment 11 [Para. 0023 and Figures 1 – 5 of the present application]. The second horizontally-directed depth of the second storage compartment portion 2 of the second door storage compartment 11 is less than half of the full first horizontally-directed depth of the first storage compartment portion 1 [Para. 0023 and Figures 1, 3, and 4 of the present application]. The second vertically-directed storage depth of the second storage compartment portion 2 of the second door storage compartment 11 is substantially the same as the first vertically-directed storage depth of the first storage compartment portion 1 [Para. 0023 and Figures 1 – 5 of the present application].

THE REFERENCE

US Patent No. 2,074,785 to Gentz (Gentz '785) discloses a refrigerator 15 (Col. 2, lines 3 -5, Figures 1- 5) having a basket 34 mounted on a door 18 of the refrigerator 15 (Col.3, lines 9 -23; Figures 1- 5). The basket 34 comprises three wire frames 37 (Col.3, lines 9 -23, Figures 1 and 4) and the right hand portion of the basket 34 is only substantially one-half the width of the left hand portion of the basket (Col.3, lines 11 - 14, Figures 1 and 4).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- a. Whether claims 9, 10, and 12 are unpatentable under 35 U.S.C. §102(b) as being anticipated by US Patent No. 2,074,785 to Gentz?
- b. Whether claim 13 is unpatentable under 35 U.S.C. §102(b) as being anticipated by US Patent No. 2,074,785 to Gentz?
- c. Whether claims 11 and 16 are unpatentable under 35 U.S.C. § 103(a) over US Patent No. 2,074,785 to Gentz?

(7) ARGUMENT

- a. Whether claims 9, 10, and 12 are unpatentable under 35 U.S.C. §102(b) as being anticipated by US Patent No. 2,074,785 to Gentz?

The Examiner asserts that Gentz '785 discloses a basket 34 comprising three wire frames 37 (Col.3, lines 9 -23, Figures 1 and 4) and the right hand portion

of the basket 34 is only substantially one-half the width of the left hand portion of the basket (Official Action, p. 4). However, Appellant submits that Gentz '785 does not teach or disclose the door storage compartment for a refrigerator recited in claim 9 of the present application.

Claim 9 of the present application recites that the second storage compartment portion has a second horizontally-directed depth which is "less than half of" the full first horizontally-directed depth. In contrast, Gentz '785 states that the recessed portion of the basket 34 is "one-half the width" of the remainder of the basket (page 2, left col., lines 12-13; see also Figure 4 of Gentz '785).

Furthermore, Gentz '785's motivation for making a portion of the shelf narrower is not to accommodate tall articles below but to provide specialized storage space: "[t]he narrower portion affords a storage space for relatively flat articles." (Page 2, left col., lines 13-15, of Gentz '785).

Thus, a tall object such as a bottle, if it were placed in a lower door shelf, would not fit properly next to the upper, recessed shelf 34 because the recessed portion in Gentz '785's shelf extends out too far in the horizontal direction. An object such as a tall bottle that occupies the full width of a shelf, but which narrows to a taper at the top, will nevertheless require an amount of space that is greater than half the full shelf width. Gentz '785's half-width shelf will interfere with the tops of such tall objects.

It is therefore asserted that the outstanding rejection of claim 9 under 35 U.S.C §102(b) is in error and should be reversed.

- b. Whether claim 13 is unpatentable under 35 U.S.C. §102(b) as being anticipated by US Patent No. 2,074,785 to Gentz?

Initially it should be noted that claim 13 depends from claim 9 and claim 9 has been shown above to be in condition for allowance. Therefore, it is respectfully asserted that claim 13 is likewise in condition for allowance. Claim 13 of the present application recites that the door storage compartment for a refrigerator recited in claim 9 of the present application also includes an intermediate wall 3, and the first and second storage compartment portions 1,2 are generally boxed shaped and separated by the intermediate wall 3. The Examiner does not recite any structure in Gentz '785 that shows a door storage compartment for a refrigerator having a storage compartment that is generally box-shaped as claimed. Furthermore, element 39 of Gentz '785, which is stated to be an intermediate wall, is in fact a wire that is underneath the lower level 37 and is for supporting the longitudinal rods 38 (page 2, left col., lines 20-23 of Gentz '785). It follows that element 39 of Gentz '785, being underneath the lower level 37 of basket 34, does not separate the first and second storage compartments as is required of the intermediate wall element of claim 13.

As detailed in Appellant's specification, the intermediate wall of claim 13 serves the additional purpose of strengthening the shelf:

In order to increase the bending stiffness of the door storage compartment when it is loaded, an intermediate wall 3 is provided in the area in which the two sections 1, 2 are adjacent to one another and connects front walls 4, 5 (which face the interior of the refrigerator) of the sections 1, 2 to an integral rear wall 6, which is common to the two sections 1, 2 and rests on the inner wall of the refrigerator door when the door storage compartment is installed. The intermediate wall 3 on the one hand prevents the rear wall 6 from bending laterally when subjected to a bending load, while on the other hand it forms a support for the front wall 5 of the section 2 of smaller depth.

Originally-submitted specification, page 7, lines 15-26 (emphasis added).

In contrast, the shelf structures in Gentz '785 are made of heavy steel wires that are not in need of such structural reinforcement. Thus, Gentz '785 provides

no teachings whatsoever that would lead one skilled in the art to provide an intermediate wall as claimed.

It is therefore asserted that the outstanding rejection of claim 13 under 35 U.S.C §102(b) is in error and should be reversed.

c. Whether claims 11 and 16 are unpatentable under 35 U.S.C. § 103(a) over US Patent No. 2,074,785 to Gentz?

Initially it should be noted that claim 11 depends from claim 9 and claim 9 has been shown above to be in condition for allowance. Therefore, it is respectfully asserted that claim 11 is likewise in condition for allowance. The Examiner asserts that Gentz '785 discloses a basket 34 comprising three wire frames 37 (Col.3, lines 9 -23, Figures 1 and 4) and the right hand portion of the basket 34 is only substantially one-half the width of the left hand portion of the basket (Official Action, p. 4). However, Appellant submits that Gentz '785 does not teach or disclose the refrigerator recited in claim 16 of the present application.

Claim 16 of the present application recites that the second storage compartment portion has a second horizontally-directed depth which is "less than half of" the full first horizontally-directed depth. In contrast, Gentz '785 states that the recessed portion of the basket 34 is "one-half the width" of the remainder of the basket (page 2, left col., lines 12-13; see also Figure 4 of Gentz '785). Furthermore, Gentz '785's motivation for making a portion of the shelf narrower is not to accommodate tall articles below but to provide specialized storage space: "[t]he narrower portion affords a storage space for relatively flat articles." (Page 2, left col., lines 13-15, of Gentz '785).

Thus, a tall object such as a bottle, if it were placed in a lower door shelf, would not fit properly next to the upper, recessed shelf 34 because the recessed

portion in Gentz '785's shelf extends out too far in the horizontal direction. An object such as a tall bottle that occupies the full width of a shelf, but which narrows to a taper at the top, will nevertheless require an amount of space that is greater than half the full shelf width. Gentz '785's half-width shelf will interfere with the tops of such tall objects.

It is therefore asserted that the outstanding rejections of claims 11 and 16 under 35 U.S.C §103(a) are in error and should be reversed.

(8) CONCLUSION

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejection of Claims 9 – 13, 15, and 16 over the cited art, and hold that the Appellant's claims be allowable over such art.

Respectfully submitted,



Russell W. Warnock

Registration No. 32,860

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BSH Home Appliances Corporation
100 Bosch Blvd.
New Bern, NC 28562
Phone: 252-672-7927
Fax: 714-845-2807
russ.warnock@bshg.com

CLAIMS APPENDIX

1 - 8 (Cancelled)

9. A door storage compartment for a refrigerator, the door storage compartment comprising:

at least one first storage compartment portion having a full first horizontally-directed depth and a first vertically-directed storage depth; and

at least one second storage compartment portion having a front wall, the second storage compartment portion having a second horizontally-directed depth being less than half of the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, and the front wall of the second storage compartment portion having a second vertically-directed storage depth substantially the same as the first vertically-directed storage depth, whereby the second vertically-directed storage depth of the second storage compartment portion is substantially the same as the first vertically-directed storage depth.

10. The door storage compartment according to claim 9, wherein the first and second storage compartment portions have equivalent lengths.
11. The door storage compartment according to claim 9, wherein the first and second storage compartment portions have different lengths.
12. The door storage compartment according to claim 9, wherein the first and second storage compartment portions are formed as a one-piece part.
13. The door storage compartment according to claim 9, further comprising an intermediate wall, and the first and second storage compartment portions are generally boxed shaped and separated by the intermediate wall.
14. The door storage compartment according to claim 13, wherein the intermediate wall has a horizontal reinforcing web.
15. The door storage compartment according to claim 14, wherein the horizontal reinforcing web forms an upper end of the intermediate wall.
16. A refrigerator, comprising:

a housing;

a door attached to the housing;

a first door storage compartment mounted on the door; and

a second door storage compartment mounted on the door above the first door storage compartment, the second door storage compartment containing at least one first storage compartment portion having a full first horizontally-directed depth and a first vertically-directed storage depth, and at least one second storage compartment portion having a second horizontally-directed depth being less than the full first horizontally-directed depth and following the first storage compartment portion in a longitudinal direction of the second door storage compartment, the second horizontally-directed depth being less than half of the full first horizontally-directed depth and the second vertically-directed storage depth being substantially the same as the first vertically-directed storage depth.

17. A door storage compartment for a refrigerator, the door storage compartment comprising:

at least one first storage compartment portion having a full first horizontally-directed depth and a first vertically-directed storage depth; and

at least one second storage compartment portion having a second inwardly-directed depth being less than the full first horizontally-directed depth, and a second vertically-directed storage depth and following the first storage compartment portion in a longitudinal direction of the door storage compartment, the second horizontally-directed depth being less than half of the full first horizontally-directed depth and the second vertically-directed storage depth being substantially the same as the first vertically-directed storage depth, wherein the at least one second storage compartment portion includes a sloped front wall portion extending angularly downwardly between an access opening and a base of the second storage compartment portion, the base defining an area less than an area defined by the access opening.

18. A door storage compartment for a refrigerator according to claim 17 wherein the base defines a base access opening having an area less than the area defined by the access opening.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None